IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4553 OF 2006

Prabhakar Dattatraya Gangolli & Anr. : Petitioners
(Orig.Applicants/
Plaintiffs)

V/s.

Smt.Nalini Suryakant Shah & Ors. : Respondents
(Orig.Respondents/
Defendants)

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Mr.P.N.Patwardhan i/b. Mr.A.G.Damle for the petitioners.
None present for the respondents, though served.

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CORAM : S.A.BOBDE, J.

DATE : JULY 12, 2007.

P.C.

1. The petitioners have challenged the order of the learned Judge of the Court of Small Causes dated 4.4.2006 by which the learned Judge has refused to set aside the earlier order dated 31.1.2006 by which the on-going cross-examination by the petitioners' Advocate of the respondent-defendant was treated as closed. There is no doubt that the learned counsel for the petitioners who was cross-examining the defendant could not carry on the cross-examination on 31.1.2006. That was because he had

apparently to go to New Delhi for some urgent legal work in the morning. He returned on the same day to Mumbai, but however the cross-examination which he was conducting was treated as closed. The learned counsel has submitted the air-tickets and the boarding pass. Thus, the reason appears to be bona fide and genuine.

2. In this Writ Petition, none has appeared for the respondents to oppose the prayer even though they have been served as recorded by this Court in an earlier order. Having regard to the circumstances of the case and the genuine reason given by the learned counsel for the petitioners, I consider it appropriate in the interest of justice to set aside the impugned order.

3. The impugned order is hereby set aside and the order of the trial Court dated 31.1.2006 closing the respondent’s cross-examination is also set aside. The trial Court shall permit the petitioners to cross-examine the defendant-respondent. It is, however, made clear that no request for adjournment for this cross-examination if made by the petitioners shall be entertained by the trial Court and the petitioners shall pay costs in the sum of Rs.2,500/- to the respondents.

4. The rule is made absolute in the above terms.

S.A. BOBDE, J.